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Attorneys for Plaintiffs Bragi GmbH,
Bragi Store, LLC, and Bragi North America, LLC

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Bragi GmbH, Bragi Store, LLC, and Bragi
North America, LLC

Plaintiffs,

vs.

OnePlus Technology (Shenzhen) Co., Ltd, ,

Defendant.

CASE NO.:

COMPLAINT

DEMAND FOR JURY TRIAL

Plaintiffs Bragi GmbH, Bragi Store, LLC, and Bragi North America, LLC and, by and
through their undersigned attorneys, hereby state for their Complaint against Defendant OnePlus
Technology (Shenzhen) Co., Ltd, the following:

Parties

1. Plaintiff Bragi GmbH (“Bragi GmbH”) is a German limited liability company, with its
principal place of business at Sendlinger Straße 7, Munich, Germany, 80331. Bragi GmbH is

- 1 an active entity in good standing with the relevant German authorities. Bragi GmbH owns the
2 United States trademarks being infringed by the Defendant.
- 3 2. Bragi GmbH has two wholly-owned U.S. subsidiaries, Bragi Store, LLC and Bragi North
4 America, LLC, that are Delaware limited liability companies with principal places of
5 business at 20635 Abbey Woods Court, Ste. 303, Frankfort, IL 60423.
- 6 3. Plaintiff Bragi Store, LLC (“Bragi Store”) is the exclusive licensee of the U.S. trademarks
7 asserted in this action in the direct e-commerce sales channel.
- 8 4. Plaintiff Bragi North America, LLC (“Bragi NA”) is the exclusive licensee of the U.S.
9 trademarks asserted in this action in the retail distribution sales channel.
- 10 5. Collectively, Bragi GmbH, Bragi Store, and Bragi NA are referred to as “Bragi” herein.
- 11 6. Launched by a highly successful Kickstarter campaign, Bragi designs and makes premium
12 wireless intelligent earphones for use with smartphones, computers, tablets, and portable
13 media players.
- 14 7. Upon information and belief, Defendant OnePlus Technology (Shenzhen) Co., Ltd
15 (“OnePlus”) identified itself on its trademark application with the United States Patent and
16 Trademark Office (“USPTO”) as a Chinese limited liability company with a principal place
17 of business at Room 201, Building A, No. 1 Qianwan Road 1, Qianhai Shenzhen-HK
18 Cooperation Zone, Shenzhen, China. Upon information and belief, Defendant OnePlus
19 currently regularly does business from 18C05, 18C04, 18C03, 18C02, Shenye Tairan
20 Building, North To Binhe Avenue, Futian District, 518040 Shenzhen, China, and might have
21 failed to update its address with the USPTO.
- 22 8. OnePlus manufactures and sells mid-priced smartphones and accessories throughout the
23 world. In 2018, OnePlus focused its efforts on expanding into the U.S. wireless market. To
24 that end, OnePlus has hired or is hiring multiple employees in San Francisco, California, to
25 support its sales and marketing efforts in the United States. Its marketing efforts in San
26
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28 Complaint

1 Francisco include, for example, an Open Ears Forum listening event in San Francisco on
2 April 7, 2018 and a pop-up marketing event at the Contemporary Jewish Museum the
3 evening of May 21, 2018 for the United States launch of its new OnePlus 6 smartphone and
4 Bullets Wireless earphones.

5
6 9. Upon information and belief, OnePlus maintains a regular place of business in San Francisco,
7 CA that is the base for its U.S. marketing and sales efforts.

8 10. Despite its extensive commercial activities in California, OnePlus has not registered to do
9 business in California.

10 **Jurisdiction and Venue**

11 11. Upon information and belief, OnePlus regularly conducts business in the United States,
12 including most actively in California, through its employees and agents.

13
14 12. This Court has subject matter jurisdiction over Bragi's claims under 28 U.S.C. §§ 1331,
15 1332, 1338 and 1367.

16 13. This Court has personal jurisdiction over OnePlus under Cal. Civ. P. Code § 410.10 and/or
17 Federal Rule of Civil Procedure 4(k).

18 14. Venue is proper in this district under 28 U.S.C. §§ 1391(b) and/or (c) because OnePlus
19 committed acts of infringement in this District, the Court has personal jurisdiction over
20 OnePlus, and/or OnePlus does not reside in the United States.

21 **Bragi's Creation of THE DASH**

22
23 15. Bragi was established in 2013 by Danish entrepreneur Nikolaj Hviid.

24 16. In 2014, Bragi held a highly successful Kickstarter campaign in the United States based on
25 its concept for THE DASH smart wireless earphones having multiple sophisticated features,
26 including wireless telephony, activity tracking, heart rate monitoring, an internal music
27 player, internal storage, and gesture controls.

28 17. The Kickstarter campaign exceeded its initial goal in less than 48 hours.

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1 18. In January 2015, THE DASH wireless earphones received the “Innovation Award” for
2 wearables at the annual Consumer Electronics Show in Las Vegas, Nevada – one of the most
3 high-profile technology events in the world.

4
5 19. The Mobile World Congress 2018 awarded Bragi a Global Mobile Award for Best Wearable
6 Mobile Technology for its second generation wireless earphone, THE DASH PRO.

7 20. Included with each pair of THE DASH earphones is THE DASH charger, which rapidly
8 charges earphones to full capacity in less than 30 minutes.

9 **THE DASH Trademark**

10 21. On October 20, 2015, the United States Patent and Trademark Office (“USPTO”) issued
11 Bragi GmbH U.S. Reg. No. 4,834,630 (“the 630 Registration”) for THE DASH for use in
12 connection with a variety of goods and services in International Classes 9, 10, and 35. A true
13 and correct copy of the 630 Registration certificate for THE DASH is attached hereto as
14 Exhibit A.
15

16 22. On March 13, 2018, the USPTO issued Bragi GmbH U.S. Reg. No. 5,424,961 (“the 961
17 Registration”) for THE DASH PRO in International Class 9 for use in connection with
18 “Wireless earpieces and accessories therefor, namely, batteries, battery chargers, earbud
19 cushions, fitted covers for earbuds, carrying cases for earbuds, cables and cords for use with
20 earbuds.” A true and correct copy of the 961 Registration certificate for THE DASH PRO is
21 attached hereto as Exhibit B.
22

23 23. Collectively, the 630 Registration, 961 Registration, and all common law rights associated
24 with Bragi’s use of the term DASH are referred to herein as “Bragi’s DASH Marks.”

25 **OnePlus Infringement**

26 24. Upon information and belief, sometime in or around 2016, OnePlus began using the
27 trademark DASH in connection with electronic smartphone chargers and cables, as shown
28 below, that are designed to rapidly charge a wireless device within 30 minutes.

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25. On or around April 13, 2016, OnePlus filed an application with the USPTO for the composite design and word mark DASH CHARGE (disclaiming “charge”), as shown below, in International Class 009 for use in connection with “IC 009. US 021 023 026 036 038. G & S: Batteries, electric; Computer operating programs, recorded; Electrical adapters; Electronic book readers; Junction sleeves for electric cables; Mobile phones; Monopods used to take photographs by positioning a smartphone or camera beyond the normal range of the arm; Smartglasses; Smartwatches; Wearable activity trackers.”



1 26. Upon information and belief, the mark used by OnePlus on the actual power supply unit, as
2 shown above, is DASH.

3 27. In any event, consumers viewing OnePlus's DASH CHARGE composite mark will attach
4 little to no significance to the "charge" portion of the mark as it is a generic term for the
5 goods and is used in very small type font in the composite mark.
6

7 28. On July 15, 2016, Bragi sent OnePlus a letter demanding that OnePlus cease and desist its
8 infringing use of Bragi's DASH Marks then in existence.

9 29. On or around November 7, 2016, the USPTO issued an office action rejecting the DASH
10 CHARGE application in light of, among other things, a likelihood of confusion with Bragi
11 GmbH's 630 Registration for THE DASH.

12 30. In the European Union, Bragi successfully opposed OnePlus' attempt to register DASH
13 CHARGE, resulting in a January 23, 2018 decision by the Opposition Division for the
14 European Union Intellectual Property Office finding a likelihood of confusion between
15 OnePlus' applied-for mark and Bragi's THE DASH European registration (upon which its
16 U.S. registration is based).
17

18 31. Both Bragi's earphones and chargers bearing Bragi's DASH Marks and OnePlus's chargers
19 and cables bearing the DASH or DASH CHARGE marks (collectively the Infringing
20 OnePlus DASH Marks) are marketed to the general public as accessories for smartphones.
21

22 32. Both Bragi's earphones and chargers bearing Bragi's DASH Marks and chargers bearing the
23 Infringing OnePlus DASH Marks are sold online direct to consumers as well as through
24 online distributors, including through the Amazon.com website.

25 33. Bragi's earphones and chargers bearing Bragi's DASH Marks and chargers bearing the
26 Infringing OnePlus DASH Marks rely on marketing via social media to target tech-savvy
27 consumers.
28

1 34. Despite the decisions by two trademark offices finding a likelihood of confusion between
2 Bragi's registrations and OnePlus's applications, the clear overlap between the goods and the
3 near-identical similarity of the marks, and the identical consumer base, marketing methods,
4 and marketing channels, OnePlus has inexplicably refused to comply with Bragi's cease and
5 desist demands for almost two years.
6

7 35. On May 16, 2018, OnePlus livestreamed its launch of the OnePlus 6 smartphone. Within
8 hours, media outlets were describing the smartphone as featuring the DASH charger. The
9 OnePlus 6 with DASH power adapter and cable will be on sale in the United States
10 beginning May 22, 2018.
11

12 36. On May 16, 2018, OnePlus also launched new wireless earphones called Bullets Wireless.
13 The Bullets Wireless earphones make use of the OnePlus DASH charger technology and
14 upon information and belief will be sold in bundles with a DASH charger and DASH power
15 cable.
16

17 37. Upon information and belief, OnePlus's launch of its OnePlus 6 smartphone and Bullets
18 Wireless earphones will sharply increase the interest in and purchase of the charger and cable
19 bearing the Infringing OnePlus DASH Marks.
20

21 38. As a result of OnePlus' May 16, 2018 launch of its OnePlus 6 smartphone and Bullets
22 Wireless earphones, and attendant focus on breaking into the U.S. smartphone and wireless
23 earphone market, Bragi anticipates that it will suffer immediate and irreparable harm as a
24 result of OnePlus' refusal to cease and desist its use of the Infringing OnePlus DASH
25 trademark in the United States.
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COUNT I

Trademark Infringement under 15 U.S.C. §1125 by all Plaintiffs against OnePlus

39. Bragi reasserts and realleges all of the allegations contained in the preceding paragraphs as if fully set forth herein.

40. This claim arises under the Lanham Act, particularly under 15 U.S.C. § 1125.

41. Bragi's THE DASH and THE DASH PRO registered trademarks are inherently distinctive.

42. Bragi's use of the Bragi DASH Marks throughout the United States and abroad in connection with earphones and chargers for use with smartphones therefore has achieved significant consumer recognition.

43. Bragi's goods offered under the Bragi DASH Marks are well-known worldwide, including but not limited to in the United States and Europe.

44. The relevant purchasing public generally associates and identifies the Bragi DASH Marks with Bragi, its earphones, and its chargers.

45. OnePlus's continued use of the Infringing OnePlus DASH tMarks in connection with chargers and cables for smartphones and wireless earphones constitutes trademark infringement and tends to falsely represent that there is an association or affiliation between OnePlus and Bragi that does not exist.

46. OnePlus's conduct is likely to confuse, mislead, and deceive consumers, purchasers, and members of the public as to OnePlus's association or affiliation with Bragi and/or that OnePlus's services have been sponsored, approved, authorized, or licensed by Bragi, all in violation of 15 U.S.C. § 1125.

47. OnePlus will, if not enjoined by the Court, continue its acts of trademark infringement, thereby deceiving the public and causing Bragi immediate and irreparable harm, damage, and injury.

COUNT II

Trademark Infringement under 15 U.S.C. §114 by Bragi GmbH against OnePlus

48. Bragi GmbH reasserts and realleges all of the allegations contained in the preceding paragraphs as if fully set forth herein.

49. This claim arises under the Lanham Act, particularly under 15 U.S.C. § 1114.

50. Bragi GmbH's THE DASH and THE DASH PRO registered trademarks are inherently distinctive.

51. Bragi GmbH's use of the registered Bragi DASH Marks throughout the United States and abroad in connection with earphones and chargers for use with smartphones therefore has achieved significant consumer recognition.

52. Bragi GmbH's goods offered under the registered Bragi DASH Marks are well-known worldwide, including but not limited to in the United States and Europe.

53. The relevant purchasing public generally associates and identifies the registered Bragi DASH Marks with Bragi GmbH, its earphones, and its chargers.

54. OnePlus's continued use of the Infringing OnePlus DASH Marks in connection with chargers and cables for smartphones and wireless earphones constitutes trademark infringement and tends to falsely represent that there is an association or affiliation between OnePlus and Bragi GmbH that does not exist.

55. OnePlus's conduct is likely to confuse, mislead, and deceive consumers, purchasers, and members of the public as to OnePlus's association or affiliation with Bragi GmbH and/or that OnePlus's services have been sponsored, approved, authorized, or licensed by Bragi GmbH, all in violation of 15 U.S.C. § 1114.

56. OnePlus will, if not enjoined by the Court, continue its acts of trademark infringement, thereby deceiving the public and causing Bragi GmbH immediate and irreparable harm, damage, and injury.

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COUNT III

California Unfair Competition by all Plaintiffs against OnePlus

57. Bragi reasserts and realleges all of the allegations contained in the preceding paragraphs as if fully set forth herein.

58. This claim arises under California law, particularly under California Business and Professions Code § 17200 et seq.

59. Bragi's THE DASH and THE DASH PRO registered trademarks are inherently distinctive.

60. Bragi's use of Bragi's DASH Marks throughout the United States and abroad in connection with earphones and chargers for use with smartphones therefore has achieved significant consumer recognition.

61. Bragi's goods offered under Bragi's DASH Marks are well-known worldwide, including but not limited to in the United States and Europe.

62. The relevant purchasing public generally associates and identifies Bragi's DASH Marks with Bragi, its earphones, and its chargers.

63. OnePlus's continued use of the Infringing OnePlus DASHMarks in connection with chargers and cables for smartphones and wireless earphones constitutes trademark infringement and tends to falsely represent that there is an association or affiliation between OnePlus and Bragi that does not exist.

64. OnePlus's conduct is likely to confuse, mislead, and deceive consumers, purchasers, and members of the public as to OnePlus's association or affiliation with Bragi and/or that OnePlus's services have been sponsored, approved, authorized, or licensed by Bragi.

65. OnePlus will, if not enjoined by the Court, continue its acts of unfair competition, thereby deceiving the public and causing Bragi immediate and irreparable harm, damage, and injury.

PRAYER FOR RELIEF

Wherefore, Plaintiffs, Bragi GmbH, Bragi Store, LLC, and Bragi North America, LLC respectfully request that this Court grant the following relief:

- A. A declaration that OnePlus is violating Bragi's rights in and to the Bragi DASH Marks under the Lanham Act;
- B. A declaration that OnePlus is unfairly competing with Bragi under California law;
- C. A temporary restraining order, preliminary injunction and permanent injunction prohibiting OnePlus and all those acting in concert with it from using the trademarks DASH, DASH CHARGE, and any other trademark confusingly similar to Bragi's DASH Marks in connection with the sale, offering for sale, or distribution of smartphone and/or wireless earphone chargers, cables, and other smartphone accessories;
- D. An award of three times Bragi's damages, disgorgement of OnePlus's profits attributable to its infringement, and costs of this action;
- E. That the Court declare this an exceptional case and that OnePlus be required to pay Bragi its reasonable attorneys' fees incurred in this action, in accordance with the provisions of 15 U.S.C. §1117;
- F. That OnePlus be required to pay Bragi's costs and disbursements of this action; and
- G. Grant Bragi any such relief as this Court deems just and equitable.

JURY DEMAND

Bragi GmbH, Bragi Store, LLC, and Bragi North America, LLC hereby demand a jury trial on all issues so triable.

Dated: May 18, 2018

Respectfully submitted,

/s/ Christina J. Moser

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